

1. A Company staff person will be specifically assigned to promoting Distance Learning and other telecommunications-based educational applications;
2. The Company will co-sponsor three (3) forums on Distance Learning Technology and other Telecommunications Based Educational Applications to be held in each of the three district locations of the Company. These forums will be provided for all county and local school superintendents and/or their designates. The Company will ask other local telephone companies, local cable TV companies, local competitive access providers, and other providers of telecommunication-based educational equipment to participate as co-sponsors and coordinators of these forums. The objective of these forums will be to inform the attendees of the different types, costs, and capabilities of various technologies, as well as the available funding mechanisms for advancing the development of such application in these areas.

Where and as individual county school superintendents establish their designates or task forces for the development of distance learning, or other telecommunication based educational applications, the Company will participate and assist as requested in the development of specific applications on a case-by-case basis. No such designate or task force shall possess authority to require or bind the Company, or any other provider of telecommunications-based educational applications, to provide or implement any application other than those proposed by the Company or the provider.

Any funds allocated by the Company pursuant to Section 10.F of this Plan will be available to all school districts served by the Company on a grant basis for the purchase of equipment and/or other technology to assist in the development of the school districts' chosen applications. Upon receipt of any such grant request, the Company will advise the Staff of any proposed disposition thereof. The Company's consent to any such grant request will not be unreasonably withheld;

3. The Company will, where necessary and appropriate coordinate with adjoining counties, telephone companies, and other providers of educational technologies in the development of distance learning applications and other telecommunications-based educational applications;

4. The Company will assist schools within its service territory in the deployment of the required hardware for use in the classrooms in the deployment of distance learning and other telecommunications-based educational applications;
 5. The Company will work with the Ohio Department of Education, schools within its service territory, and local organizations to assist in defining the types, costs, capabilities, and funding mechanisms of distance learning and other telecommunications-based educational applications;
 6. The Company will continue to provide education programs to schools, civic groups, parent groups, and educational leaders on the technology and advantages of distance learning and other telecommunications-based educational applications;
 7. The Company will allocate four optical fibers specifically for educational institutions as fiber optic cable is deployed in proximity to such institutions;
 8. The Company will, through its proactive efforts with schools, make available the technology necessary to fulfill the requirements of each distance learning application, whether it be fiber, T-Span technology, or via the telephone industry switched network; and
 9. The Company will work with educators and regulators to develop tariffs to compensate the Company for utilization of the network specifically designed for educational purposes.
 10. The Company will conduct a study to assess its ability to offer preferential rates to schools as school usage of telecommunications-based educational applications increases significantly in the near future.
 11. The Company will, on the Implementation Date, reduce rates for basic local exchange service to schools within the Company's service territory on a uniform per-line basis, by an annual aggregate amount of \$100,000.
- (N) Additional customer educational needs and preferred communication methods will be identified through the focus group segment of the Monitor program. The focus groups will target each specific customer type, residential, business, educational and public-interest-

related institutions, to determine educational needs and preferred communication methods. Specific programs will then be developed to meet those customer needs.

Multiple programs will be set in motion to educate the customer base on the products and services available through the Company:

1. The comprehensive range of services and products will be identified and explained in the opening pages of Company phone directories;
2. Direct mail and telemarketing programs will be executed annually including, but not limited to, digital cut over telemarketing, additional phone line promotions, and equipment lease option programs.
3. Global feature activation will be implemented to provide customers the opportunity to experience various services on a free trial basis. Customers will receive introductory letters and step by step user guides explaining how to use each service and the benefits of each.
4. An installation order follow-up program will be implemented in 1994. This program will allow for customer feedback on the installation process as well as interactive explanation of additional service availability.

These new programs will be supplemental to the many existing programs currently administered by the Company.

11. PROGRESS REPORTS:

The Company will, on or before the 60th day after each anniversary of the Implementation Date, file annual progress reports with the Commission providing a progress evaluation for each commitment, in a form substantially similar to the "PUCO Annual Commitment Progress Report" attached hereto. The Company will report the aggregate impact of the set of commitments at the time it seeks to extend or modify or replace the Plan near the end of the Initial Term

12. RESALE AND SHARING:

The provisions of the following tariffs, orders, and conditions shall be applicable to the Plan and constitute the Company's policies and practices regarding the resale and sharing of its services:

- (A) Provisions and rates as indicated in the Company's General Exchange Tariff, P.U.C.O. No. 8; and the Company's Local Exchange Tariff, P.U.C.O. No. 9.
- (B) Commission Opinion and Order of August 19, 1986, and Entry on Rehearing of October 14, 1986, in Case No. 85-1199-TP-COI.
- (C) A provider of resale/shared local service must notify the Company, in writing, of its intention to discontinue service and the number of customer lines it serves not less than 90 days prior to service termination.

13. PRICING FLEXIBILITY

The Company may apply for flexible pricing in accordance with the provisions of the rules and procedures established in Case No. 84-944-TP-COI or Case No. 86-1144-TP-COI, or other applicable rules and procedures other than those arising under Chapter 4927, Revised Code, during the term of the Plan for existing services currently not approved for flexible pricing. All services offered on the Implementation Date that are approved for flexible pricing in accordance with such rules and procedures shall remain subject to such pricing.

14. INDIVIDUAL CONTRACTS:

- (A) The Company may enter into individual contracts with its customers for services not having a tariffed rate, where it faces a current competitive challenge for the provision of such services and is able to demonstrate the legitimacy of the specific competitive challenge to the Commission, or other unique circumstances.
- (B) The Commission shall review and act upon the proposed contract and supporting cost justification in accordance with rules and procedures developed under Case No. 84-944-TP-COI and Case No. 86-1144-TP-COI.
- (C) The Company may seek pre-approval of contractual arrangements for services, provided the Company seeks approval of the terms and the criteria for the rate schedules applicable to the services covered by the arrangements, through the process set forth in paragraph (B) above. Once the terms and criteria for rate schedules are approved by the Commission, contractual arrangements falling within those approved parameters will be allowed to take effect immediately upon their filing with the Commission.

- (D) Upon application to and approval of the Commission, the Company may implement a contract for services with a specific customer when necessary to respond to an imminent competitive threat to a specific customer.

15. CAPITAL RECOVERY:

Capital recovery levels during the Initial Term shall be the recovery rates in effect on the Implementation Date. The Company shall file a depreciation study in the first quarter of 1996 utilizing 1995 data and upon approval of rates based on such study it shall implement new depreciation rates in conjunction with the extension, modification or replacement of the Plan after its Initial Term.

16. EARNINGS:

Except upon application of the Company, as provided herein, no formal earnings review or adjustment proceedings related to the Company shall be initiated by the Commission during the Initial Term as long as the Company does not seek to increase the rates for any services other than pursuant to the pricing flexibility provisions of the Plan. Nothing in this Section 16 shall prevent the Commission from implementing an order resulting from any generic proceeding or generic investigation initiated by the Commission during the Initial Term and involving all large local exchange telephone companies.

17. ACCESS TO INFORMATION:

- (A) Nothing in the Plan limits the ability of the Staff or the Commission to obtain whatever information they deem appropriate to monitor the compliance of the Company with a Commission order issued under Chapter 4927, Revised Code; however, nothing herein shall be construed to expand or limit the current authority of the staff or Commission to obtain information. The Company reserves the right to identify information that it believes to be competitively sensitive or trade secret, and to request a determination that such information warrants standardized protective treatment.
- (B) The Company and Bellcore will work with the Staff so that cost information asserted to be proprietary to Bellcore, and necessary to the Staff's investigations and decisions, will be available. Discovery of such information shall not be provided by the Commission in response to a public information or FOIA-type request without three days' prior notification to the Company and Bellcore's counsel.

18. EXOGENOUS CHANGES

Irrespective of any other provision of this Plan, if an Exogenous change occurs that results in a material reduction in the net after tax operating income of the Company at any time during the Initial Term, at the Company's option the Company may, with notice to the parties in Case No. 93-230-TP-ALT, make application to the Commission for suspension of Plan Commitments 10(B), 10(C) and 10(D), to the extent that such commitments have not been implemented at the time of suspension. If the Commission has not made a preliminary determination whether an Exogenous change has occurred and has resulted in a material reduction in the net after tax operating income of the Company on or before the 45th day after filing of the Application, the Company may suspend the referenced commitments. If the Commission's preliminary determination, made on or before such 45th day, is that no such change has occurred or no such reduction has resulted, the Company shall not suspend such commitments. If such commitments are suspended and the ultimate finding is that an exogenous change has not occurred, or that such has not resulted in a material reduction in the net after tax operating income of the Company, the Company may be ordered to reinstate the suspended commitments retroactive to the time the commitments would have been implemented if not suspended. The Company may, in lieu of suspension of commitments as provided herein, seek alternative relief from the Commission, through amendment of the Plan or otherwise.

Upon suspension of Commitments 10(B), 10(C) and 10(D) of the Plan in accordance with the foregoing, the Company shall initiate proceedings under Revised Code §§4909.16 or 4909.18 to determine rates, to remain in effect thereafter in accordance with the Revised Code.

This section should not be construed to obviate the Company's obligation to follow the otherwise applicable Commission directives affecting rates or tariffs, if any, that may result from a future industry-wide generic proceeding or investigation initiated by the Commission, provided that such directives shall constitute exogenous changes as defined below.

For purposes of this section of the Plan, Exogenous changes shall include the following:

- (A) Enactment of new statutes, rules or orders or amendment or revision of existing statutes, rules, or orders, including but not limited to tax laws and orders of the Commission.
- (B) Acts of God or force majeure.

(C) Accounting changes mandated by the Commission, FCC, or FASB.

19. INTERRELATIONSHIP AND INTERDEPENDENCY OF THE PLAN PROVISIONS:

If the Company materially fails to complete its Commitments specified in Section 10 of the Plan, the Commission may, upon notice and hearing, and upon a finding that the Company has failed to comply with the Plan and thereafter, terminate the Plan in accordance herewith.

20. FORCE MAJEURE:

The Company shall not be considered to be in violation of the Plan if a violation or failure to perform was caused in whole or in part by any force or reason beyond the reasonable control of the Company, including, but not limited to, Acts of God, strikes, or war.

21. OTHER REGULATIONS AND TARIFFS:

The provisions of this Plan shall control over current rules of the Commission which are expressly in significant conflict with the Plan but only to the extent of any conflict. Company tariffs in effect on the Implementation Date are incorporated herein by this reference to the extent not superseded or in conflict herewith.

22. PROMOTIONAL OFFERINGS:

The Company may, from time to time, engage in special promotional service offerings of limited duration in order to attract new customers or increase existing customer awareness of services. The Company may waive or reduce nonrecurring or recurring charges during such special promotions for a limited time, not to exceed 90 days for any single customer. The Company shall maintain a file detailing all promotional offerings specifying the terms of such offering, time of offerings and services included. The Company shall file in its TRF case the description and terms of each promotion which it offers. Promotions shall be effective upon filing.

23. SUCCESSION:

The Plan shall be binding on and effective as to the Company, the Commission, all interested parties hereto, and their successors and assigns.

PUCO ANNUAL COMMITMENT PROGRESS REPORT

**Western Reserve Telephone Co.
93-230-TP-ALT**

NAME OF COMMITMENT: _____

Contact: _____

1. List activities implemented during past calendar year to fulfill commitment.
2. If applicable, provide budgeted and actual amount expended per activity in the past calendar year. Also, explain any significant differences between the two.
3. Describe and explain any deviations from the plan, including an update of activities planned for the previous year but not completed.
4. List planned activities and, if applicable, budgeted amounts scheduled for next year.
5. Describe any adjustments/discrepancies to previous year's report on these activities.
6. If the commitment has been completed, please provide the date and attach supporting documents.

PUCO ANNUAL COMMITMENT PROGRESS REPORT

**Western Reserve Telephone Co.
93-230-TP-ALT**

NAME OF COMMITMENT: _____

Contact: _____

1. List projects and associated activities implemented during past calendar year to fulfill commitment.
2. Provide actual percentages achieved by category in the past calendar year.
3. Describe and explain any deviations from the plan exceeding plus or minus 10 percent.
4. List planned activities scheduled for next year.
5. Describe any adjustments/discrepancies to previous year's report.
6. If the commitment has been completed, please provide the date and attach supporting documents.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing,
has been served parties listed below, by regular U.S. mail, postage
prepaid, this 7th day of January, 1994.

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PUBLIC UTILITIES COMMISSION OF OHIO
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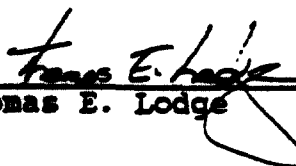
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Kansas City, Missouri 64114-0417

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30 East Broad Street, 15th Floor
Columbus, Ohio 43266-0410



Thomas E. Lodge

BEFORE**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of)
 the Office of the Consumers' Coun-)
 sel, on Behalf of the Residential)
 Utility Customers of The Western)
 Reserve Telephone Company,)

Complainant,)

v.)

Case No. 92-1525-TP-CSS

The Western Reserve Telephone)
 Company,)

Respondent.)

In the Matter of the Application of)
 The Western Reserve Telephone Com-)
 pany for Approval of an Alternative)
 Form of Regulation.)

Case No. 93-230-TP-ALT

OPINION AND ORDER

The Commission, coming now to consider the above-entitled matters, the complaint filed by the Office of the Consumers' Counsel pursuant to Section 4905.26, Revised Code; the application filed by The Western Reserve Telephone Company pursuant to Section 4927.04(A), Revised Code; the Staff Report of Investigation; having appointed attorney examiners Ann K. Reinhard and Christine M. T. Pirik to conduct the public hearings and to certify the record directly to the Commission; having reviewed the testimony and exhibits introduced into evidence at the public hearings and the stipulation and recommendation filed by The Western Reserve Telephone Company; the staff of the Public Utilities Commission of Ohio; The Ohio Bell Telephone Company; AT&T Communications of Ohio, Inc.; Bell Communications Research, Inc.; Allnet Communications Services, Inc., LCI Telecommunications Corporation, and MCI Telecommunications Corporation; the Ohio Cable Television Association; and the Ohio Department of Education; having reviewed the record and being fully advised of the facts and issues in these cases, hereby issues its opinion and order.

APPEARANCES:

Thompson, Hine & Flory, by Thomas E. Lodge, One Columbus, 10 West Broad Street, Columbus, Ohio 43215-3435, and Ivester, Skinner & Camp, PA, by H. Edward Skinner, 111 Center Street, Suite 1200,

Little Rock, Arkansas 72210, and Stephen B. Rowell, ALLTEL Corporation, One Allied Drive, Little Rock, Arkansas 72203, on behalf of The Western Reserve Telephone Company.

Lee Fisher, Attorney General of Ohio, by James B. Gainer, Section Chief, and Ann E. Henkener, Steven Nourse, and Jeffrey Van Niel, Assistant Attorneys General, Public Utilities Section, 180 East Broad Street, Columbus, Ohio 43215-3793, on behalf of the staff of the Public Utilities Commission of Ohio.

Robert S. Tongren, Consumers' Counsel, by Evelyn Robinson-McGriff, David C. Bergmann, Andrea Kelsey, Yvonne Ranft, and Richard C. Pace., Associate Consumers' Counsel, 77 South High Street, 15th Floor, Columbus, Ohio 43266-0550, on behalf of the residential consumers of The Western Reserve Telephone Company.

Emens, Kegler, Brown, Hill & Ritter Co., LPA, by Samuel C. Randazzo and Richard P. Rosenberry, 65 East State Street, Columbus, Ohio 43215, on behalf of the Western Reserve Competitive Access Providers/MetroComm AxS, L.P.

Bell, Royer & Sanders Co., LPA, by Barth E. Royer and Judith B. Sanders, 33 South Grant Avenue, Columbus, Ohio 43215-3927, on behalf of Allnet Communications Services, Inc.; LCI International Telecom Corporation, and MCI Telecommunications Corporation.

Robin P. Charleston, AT&T Law Department, 227 West Monroe Street, 6th Floor, Chicago, Illinois 60606, on behalf of AT&T Communications of Ohio, Inc.

Vorys, Sater, Seymour & Pease, by Stephen M. Howard and Sheldon A. Taft, 52 East Gay Street, P. O. Box 1008, Columbus, Ohio 43216-1008, on behalf of Ohio Cable Television Association.

Michael T. Mulcahy and Scott Rawlings, 45 Erieview, Cleveland, Ohio 44114, and Jon F. Kelly, 150 East Gay Street, Columbus, Ohio 43215, on behalf of The Ohio Bell Telephone Company.

Arter & Hadden, by Marsha Rockey Schermer and William A. Adams, One Columbus, 10 West Broad Street, Columbus, Ohio 43215-3422, and Louise L. M. Tucker, Bell Communications Research, Inc., 2101 L Street, Northwest, Suite 600, Washington D.C. 20037, on behalf of Bell Communications Research, Inc.

Lee Fisher, Attorney General of Ohio, by Karin E. Riley, Assistant Attorney General, Education Section, 30 East Broad Street, 15th Floor, Columbus, Ohio 43266-0410, on behalf of the Ohio Department of Education.

Mary A. Hull, Sprint Communications Company L.P., 8140 Ward Parkway, 5E, Kansas City, Missouri 64114-0417, on behalf of Sprint Communications Company L.P.

HISTORY OF THE PROCEEDINGS:

The Western Reserve Telephone Company (company or Western Reserve) is an Ohio corporation engaged in the business of providing telecommunications service in Ohio and is, therefore, a public utility and telephone company within the definitions set forth in Sections 4905.02 and 4905.03(A)(2), Revised Code. The company is subject to the jurisdiction of this Commission pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code. Western Reserve is a local exchange telephone company providing service to 142,856 access lines and 118,000 customers throughout 41 exchanges in its service area. Western Reserve is a subsidiary of ALLTEL Corporation. The company's present rates for telephone service were established by order of this Commission in The Western Reserve Telephone Company, Case No. 85-1973-TP-AIR (November 5, 1986).

On August 26, 1992, the Office of the Consumers' Counsel (OCC) filed a complaint, Case No. 92-1525-TP-CSS, pursuant to Section 4905.26, Revised Code, against Western Reserve alleging that Western Reserve's rates and charges are excessive under the rate-making formula set forth in Section 4909.15, Revised Code. OCC requested that the Commission find that Western Reserve's base rates should be reduced. On September 16, 1992, Western Reserve filed an answer denying the substance of the allegations contained in the complaint, as well as a response to the complaint. OCC replied on September 25, 1992.

On February 5, 1993, Western Reserve filed a notice of intent to file an application for an alternative form of regulation in accordance with Sections 4927.03 and 4927.04(A), Revised Code. Section 4927.03, Revised Code, enables the Commission to exempt from Chapters 4905 or 4909, Revised Code, or establish alternative regulatory requirements for any telephone service (except basic local exchange service) provided the Commission finds such measure is in the public interest, and that the telephone company is subject to competition with respect to the public telecommunications service, or the customers of the service have reasonably available alternatives. Section 4927.04(A), Revised Code, grants the Commission authority to consider alternatives to the traditional form of ratemaking contained in Section 4909.15, Revised Code. In accordance with these sections, the Commission instituted an investigation of alternative regulation and, as a result of its investigation, adopted rules for the establishment of alternative regulation for large local exchange telephone companies (alternative regulation rules). Alternative Regulation for Large Local Exchange Telephone Companies, Case No. 92-1149-TP-COI (January 7, 1993) and Entry on Rehearing (March 10, 1993).

Western Reserve filed its application for approval of an alternative form of regulation, Case No. 93-230-TP-ALT, on March

12, 1993. The application is governed by the rules for alternative regulation of large local exchange telephone companies adopted by the January 7, 1993 finding and order, as modified by the March 10, 1993 entry on rehearing in Case No. 92-1149-TP-COI. By entry dated April 15, 1993, the Commission accepted the application for filing as of March 12, 1993. In addition, that entry approved the company's proposed customer notice.

By entry dated April 8, 1993, in Case No. 93-1525-TP-CSS, the Commission found that the complaint filed by OCC set forth reasonable grounds for complaint within the meaning of that term as used in Section 4905.26, Revised Code. The Commission established a test period of the 12 months ended December 31, 1992, with a date certain of December 31, 1992. In addition, the Commission consolidated for hearing the complaint case and the alternative regulation case.

In accordance with the provisions of the alternative regulation rules, the staff of the Commission conducted an investigation of the matters set forth in the company's alternative regulation proceeding. A written report of the results of the staff investigation was filed on September 7, 1993, and was served as provided by law. Objections to the Staff Report of Investigation (S.R.) were timely filed on October 7, 1993, by Western Reserve; OCC; AT&T Communications of Ohio, Inc. (AT&T); the Ohio Cable Television Association (OCTVA); Allnet Communication Services, Inc., MCI Telecommunications Corporation, and LCI International Telecom Corporation (IXC Coalition); the Ohio Department of Education (ODOE); Western Reserve Competitive Access Providers/MetroComm AxS, L.P. (Western Reserve CAPs); Bell Communications Research, Inc., (Bellcore); and The Ohio Bell Telephone Company (Ohio Bell). OCTVA and Bellcore responded on October 18, 1993.

The public hearing in these cases commenced on November 29, 1993, at the offices of the Commission, 180 East Broad Street, Columbus, Ohio. Following the presentation of witnesses in the complaint case, Case No. 92-1525-TP-CSS, and a portion of the alternative regulation case, Case No. 93-230-TP-ALT, on December 8, 1993, the parties voluntarily suspended presentation of testimony in order to continue settlement negotiations.

On January 7, 1994, a stipulation resolving the issues in both proceedings was filed by Western Reserve, the staff of the Public Utilities Commission of Ohio (staff), Ohio Bell, IXC Coalition, AT&T, OCTVA, Bellcore, and ODOE (Jt. Ex. 1). The hearings reconvened on January 19, 1994, to consider the reasonableness of the stipulation. The stipulation is opposed by OCC and Western Reserve CAPs. Initial briefs were filed by the parties on February 24, 1994, and replies were filed on March 7, 1994. In addition, Evelyn Schaeffer, on behalf of the citizens of Ashtabula

County, filed a friend of the Commission brief on February 24 and March 7, 1994.

Local sessions of the hearing were conducted by the Commissioners on January 25, 1994, in Morristown, Ohio; on January 26 and 27, 1994, in Austinburg, Ohio; and on January 27, 1994, in Macedonia, Ohio, in order to afford members of the public the opportunity to testify on the proposed alternative regulation plan, OCC's complaint, and the stipulation. Notice of the complaint, the application, and the local public hearings was published in accordance with Sections 4905.26, 4909.19, and 4903.083, Revised Code. The examiners have certified the recorded transcript of the proceedings and the exhibits admitted into evidence to the Commission for its consideration.

COMMISSION REVIEW AND DISCUSSION:

Case No. 92-1525-TP-CSS is before the Commission upon the complaint of the Office of the Consumers' Counsel, pursuant to Section 4905.26, Revised Code. OCC alleges that, as a result of various decreases in expenses and increases in revenues since the company's last rate case, Western Reserve's rates are producing excess earnings over the authorized rate of return. OCC alleges that Western Reserve's rates for telephone service are excessive under the ratemaking formula set forth in Section 4909.15, Revised Code, and that the company's base rates should be reduced.

Case No. 93-230-TP-ALT is before the Commission upon the application of The Western Reserve Telephone Company for approval of an alternative form of regulation. Under Western Reserve's plan as initially proposed, the company would continue to offer flat-rate, basic local exchange service, freeze basic monopoly telephone rates other than terminating carrier common line charges and access charges for a period of three years, conduct biennial customer surveys, invest not less than \$4,000,000 in deployment of technology during each year of the plan, reduce the terminating carrier common line charges, provide measured-rate, extended local calling service to county seat exchanges and no-charge calling to public schools within each school district, and reduce touch-tone rates. In addition, the plan proposed the classification of services in four categories established by the Commission's alternative regulation rules and the establishment of pricing constraints for the services consistent with their classification.

Section 4927.02, Revised Code, provides as follows:

A) It is the policy of this state to:

- 1) Ensure the availability of adequate basic local exchange service to citizens throughout the state;

- 2) Maintain just and reasonable rates, rentals, tolls, and charges for public telecommunications service;
- 3) Encourage innovation in the telecommunications industry;
- 4) Promote diversity and options in the supply of public telecommunications services and equipment throughout the state;
- 5) Recognize the continuing emergence of a competitive telecommunications environment through flexible regulatory treatment of public telecommunications services where appropriate.

Further, Section X(B)(2) of the Commission's alternative regulation rules provides that, in determining whether an alternative regulation plan should be adopted, the Commission shall consider the following:

- a) Whether the commitments are of sufficient value to the public to warrant the provision of regulatory opportunities for superior company performance outcomes linked to those commitments;
- b) The probable impact of the plan on the financial status of the company;
- c) The probable impact of the plan on customer bills;
- d) The probable impact of the plan on telecommunications competition;
- e) The probable impact of the plan on the goal of universal service;
- f) Whether the commitments conform to the guidelines of Section IV(B) of these rules;
- g) Whether the commitments promote efficient development of the public switched network;
- h) The quality of the evidence of public support for the appropriateness of the commitments;
- i) Whether the reporting and oversight provisions are sufficient to reasonably monitor the plan

and assure its objectives are properly pursued;

- j) Whether the plan satisfies each of the public policy goals set forth in Section 4927.02, Revised Code; and
- k) Any other factor which the Commission may deem relevant in determining whether the plan is in the public interest.

As indicted previously, a stipulation resolving the issues in these cases has been presented for the Commission's consideration. Rule 4901-1-30, Ohio Administrative Code (O.A.C.), and the Commission's alternative regulation rules provide for stipulations such as that presented in these cases. Although not binding upon the Commission, stipulations, even though they are not signed by all the parties in a case, are entitled to careful consideration, particularly when sponsored by parties representing a wide range of interests and when endorsed by the staff. Cincinnati Gas & Electric Company, Case No. 82-485-EL-AIR (March 30, 1983). See also, Cleveland Electric Illuminating Company, Case No. 88-170-EL-AIR (January 31, 1989). The Ohio Supreme Court has also held that stipulations entered into between some, but not all, of the parties present in a proceeding can be accorded substantial weight by the Commission. Akron v. Pub. Util. Comm., 55 Ohio St. 2d 155 (1978); Consumers' Counsel v. Pub. Util. Comm., 64 Ohio St. 3d 123 (1992). In considering the reasonableness of the stipulation filed on January 7, 1994, the Commission will rely upon the record made in these cases, the final positions of the parties with respect to their signing the stipulation, and any pending objections to the stipulation.

THE STIPULATION

The Commission begins its consideration with an overview of the main elements of the stipulation.

Concerning Case No. 92-1525-TP-CSS, the stipulating parties indicated that OCC's complaint alleged that, since the company's last rate case, the company's revenues have increased and its expenses decreased, resulting in excess earnings of more than \$10,000,000 annually, and that the Commission should order reductions in rates to just and reasonable levels (Jt. Ex. 1, at 1). The stipulating parties agreed that, on a total-company basis, the company's revenues during the test year exceeded amounts necessary to achieve a rate of return on rate base of 10.7 percent by \$18,708,000. The parties allocated \$10,258,000 of this amount to the company's conversion to cost-based interstate settlements effective January 1, 1994. Taking into consideration that the company, as of January 1, 1994, is no longer collecting \$10,258,000

of its test-year revenues, the parties agreed that the company's intrastate rates should be reduced by \$8,450,000 in the first year, plus additional amounts in later years (Id. at 2). In year 1, the company's revenues will be reduced by \$2,000,000 attributable to elimination of residential Tel-Touch charges, \$6,200,000 attributable to reduction of intrastate, traffic-sensitive local switching access charges, \$150,000 attributable to implementation of free one-way calling to state-chartered schools, and \$100,000 attributable to a reduction of basic local exchange rates for schools. In year two and year three, revenues will be reduced an additional \$2,200,000 and \$2,400,000, respectively, attributable to reductions in intrastate, traffic-sensitive local switching access charges (Id.). In the stipulating parties' view, upon implementation of these rate adjustments, the company's rates and charges will be in all respects just and reasonable, and the complaint in Case No. 92-1525-TP-CSS will be satisfied (Id.).

Concerning Case No. 93-230-TP-ALT, the stipulating parties presented an agreed-upon alternative regulation plan for Western Reserve (Jt. Ex. 1, Attach. 1). Under the plan, the establishment of new services will be in accordance with the procedures presently in place and established in In the Matter of the Commission's Investigation into the Regulatory Framework for Telecommunication Services in Ohio, Case No. 84-944-TP-COI (April 9, 1985) and In the Matter of Phase II of the Commission's Investigation into the Regulatory Framework for Competitive Telecommunication Services in Ohio, Case No. 86-1144-TP-COI (August 2, 1988) (944/1144) (Id. at 4).

Western Reserve also commits to infrastructure deployment or customer service in addition to the minimum telephone service standards as follows. The company will maintain flat-rate, basic local exchange service during the initial term (Id. at 5). Tariffed rates, except monthly and nonrecurring charges associated with residential Tel-Touch charges, charges for services subject to pricing flexibility in accordance with 944/1144, intrastate originating and terminating carrier common line charges and local switching traffic-sensitive access charges, and rates for basic local exchange service to schools shall not be changed during the initial term (Id.). The company agrees to deploy technology and services within its service territory to provide an advanced network which will provide increased reliability and survivability, the availability of enhanced services, economic development opportunities, and increased public safety. The plan establishes time frames in which the company will have in place digital switching capabilities, SS7 capabilities, CLASS services, enhanced network, ISDN, interoffice fiber connectivity, and broadband facilities passing by schools (Id.).

The company further commits to a reduction in intrastate, traffic-sensitive local switching access charges to 2.362 cents per minute; and the discontinuation of mirroring of the interstate access rates. All other intrastate, switched traffic-sensitive and special access rates will be frozen over the initial term of the plan. Additional reductions in intrastate, traffic-sensitive local switching access charges will occur in year two and year three of the plan (Id. at 6).

Western Reserve will apply for one-way extended local calling service (ELCS) from Northfield, Twinsburg, and Aurora to Akron. If these routes are not approved by all appropriate authorities, the company will allocate an additional \$50,000 to telecommunications-based educational applications development in each of the requesting exchanges (Id.). The company will eliminate the charges for residential Tel-Touch services. All new residential lines will be equipped with Tel-Touch capability (Id.). In addition, the company will implement "no charge" one-way calling to the state-chartered elementary and secondary schools within its customers' local school districts (Id.). The stipulated plan provides that all multi-party service will be phased out within six months (Id.).

Other company commitments agreed to by the stipulating parties include the implementation of the ALLTEL Customer Satisfaction Monitor process to quantify and evaluate customer satisfaction and further integrate the customer's voice into the company's decision-making (Id. at 7), the continuation of efforts to further the goals of universal service (Id. at 7-8), the initiation and continuation of efforts to further the deployment of distance learning technology and other telecommunications-based educational applications within the company's service territory (Id. at 8-10). Additionally, the company will reduce rates for basic local exchange service to schools within the company's service territory on a uniform per-line basis, by an annual aggregate amount of \$100,000 (Id. at 10). Further, multiple programs will be set in motion to educate the customers on the products and services available through the company (Id. at 11).

The proposed plan also provides that the company may apply for flexible pricing in accordance with the existing procedures established in 944/1144, or other applicable rules other than those arising under Chapter 4927, Revised Code (Id. at 12). Western Reserve may enter into individual contracts with its customers where it faces a current competitive challenge for the provision of a service. The Commission will review the proposed contract in accordance with the procedures developed under 944/1144 (Id.).

The stipulated plan acknowledges that, if an exogenous change occurs that results in a material reduction in the net after tax

operating income of the company, the company may make application to the Commission for suspension of certain plan commitments to the extent they have not been implemented at the time of suspension. The term "exogenous change" is defined by the parties as enactment of new statutes, rules, orders, or amendment or revision of existing statutes, rules or orders, including but not limited to tax laws and orders of the Commission; acts of God or force majeure; and accounting changes mandated by the Commission, the Federal Communications Commission (FCC), or the Financial Accounting Standards Board (FASB) (Id. at 14-15).

Pursuant to the stipulation, the Ohio Bell "B" schedules shall be the intraLATA toll rate schedules that shall be applicable to calls using a Western Reserve switch that has not been enabled with intraLATA 1+, and that are calls among the company's customers, or between the company's customers and those of Ohio Bell, or between the company's customers and those of other Schedule B carriers. Western Reserve will provide its customers the option of choosing their interLATA toll carrier to carry their intraLATA toll calls on a 1+ basis. The company will remain an access provider, a secondary carrier, and will not be required to become a primary toll carrier (Jt. Ex. 1, at 3).

REVIEW OF THE STIPULATION

The ultimate question to be answered is whether, in light of the record, the stipulation is reasonable. In considering the reasonableness of a settlement, the Commission has previously recognized a need to analyze the following criteria:

- 1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- 2) Does the settlement, as a package, benefit ratepayers and the public interest?
- 3) Does the settlement package violate any important regulatory principle or practice?

In the Matter of the Restatement of the Accounts and Records of The Cincinnati Gas & Electric Company, The Dayton Power and Light Company and Columbus & Southern Ohio Electric Company, Case No. 84-1187-EL-UNC (November 26, 1985); Cleveland Electric Illuminating Company, Case No. 88-170-EL-AIR (January 31, 1989). Further, the Ohio Supreme Court has endorsed the Commission's effort using these criteria to resolve cases in a method economical to ratepayers and public utilities. Consumers' Counsel v. Pub. Util. Comm., 64 Ohio St. 3d 123, 126 (1992). Moreover, the court stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. Id.

OCC and the Western Reserve CAPs oppose the adoption of the stipulation. They contend that it does not meet the criteria established by the Commission, the policy of this state, or the Commission's alternative regulation rules. At the outset, the Commission points out that we intend to review the stipulation as a package, based on the evidence, and determine what is just and reasonable. Accordingly, we will examine the objections to the stipulation to determine whether they are sufficient to warrant rejection of the entire package.

A. Complaint:

1. Staff Participation:

The staff of the Commission participated in both the complaint case and the alternative regulation case. OCC objects to staff's participation in the complaint case. OCC contends that the Commission did not direct the staff to conduct an investigation in the complaint case, that the staff is not automatically a party in complaint proceedings under Section 4905.26, Revised Code, and that the staff did not seek to intervene in OCC's complaint case. Accordingly, OCC believes that it was improper for staff to participate and that the staff's evidence should be inadmissible (OCC Brief at 9).

OCC's objection to the staff's participation is without merit. Rule 4901-1-10, O.A.C., specifically provides that, except for certain rules not applicable here, the staff shall not be considered a party to any proceeding. Thus, the staff participates in proceedings without acquiring "party" status. Accordingly, the staff does not have to intervene under Rule 4901-1-11, O.A.C., in order to participate in OCC's complaint. Nor is a specific Commission directive required for staff to participate. Staff participates in electric fuel component proceedings, gas cost recovery proceedings, and a variety of other proceedings all the time without the Commission directing it to participate. Finally, the Commission finds it incongruous that, on one hand, OCC objects to the staff's testimony, and, on the other hand, its witness Miller relies on it to make additional adjustments to the revenue requirement (OCC Ex. 5). Contrary to OCC's arguments, the Commission finds the staff's independent expertise to be especially helpful in this type of proceeding and that staff's participation was appropriate.

OCC next argues that the stipulation should be stricken from the record because staff, Western Reserve, and other intervenors cannot settle OCC's complaint over OCC's objection. OCC rejects the stipulation as wholly inadequate (OCC Brief at 9). OCC urges that, if the Commission does not strike the stipulation, it must, nevertheless, make independent findings supported by substantial evidence in the record (Id.).

In this case, the parties have presented their entire complaint case on the record. Therefore, the Commission has, in addition to the stipulation, the benefit of all the parties' evidence in the complaint proceeding. Thus, in evaluating the complaint case, the Commission will look to see whether the stipulation's resolution is reasonable and supported by the evidence. As pointed out by the IXC Coalition, one can appreciate OCC's frustration with a stipulation which agrees with OCC's charge that Western Reserve realized substantial excess test-year earnings, but which provides for no reduction in basic local service rates as a part of the remedy. However, the Commission has the obligation to adopt a remedy which is responsive to the cause for the complaint and fair and reasonable to all Western Reserve's customers. Thus, OCC's failure to endorse the stipulation does not preclude the Commission from adopting the stipulation if it presents an appropriate resolution of the issues in the complaint case.

2. Revenue Requirements:

The first substantive term of the stipulation is the calculation of excess revenues for the test year. The stipulation provides that, on a total-company basis, the company's revenues exceeded that which is reasonable by \$18,708,000. The stipulation provides that the rate of return on rate base resulting from a revenue reduction of \$18,708,000 is 10.7 percent (Jt. Ex. 1, at 2). Staff witness Hensel testified that a rate of return of 10.7 percent is reasonable as it is within the range of the overall rates of return supported by the record (Staff Ex. 4, at 2). The record reflects that OCC witness Pultz testified that a reasonable range for return on rate base for this company is 9.88 to 11.20 percent, and he recommended that 10.54 percent be the authorized rate of return (OCC Ex. 1, at 48). Company witness Hanley testified that the company's rate of return on rate base should be 12.18 percent (WR Ex. 5, at 2). Staff witness Hensel originally supported a rate of return of 9.9 percent (Staff Ex. 3, Sched. C-1). However, Ms. Hensel could not support the return on equity component of rate of return; thus, her overall rate of return must be discounted (Tr. VII, 74-75). Nevertheless, the stipulation's recommended overall rate of return of 10.7 percent clearly falls within the range appearing in the record. Indeed, it falls within the range recommended by OCC's witness. The Commission finds that the stipulated overall rate of return is supported by the evidence and is reasonable.

1. Although certainly not controlling to our decision, we note that in the public hearings virtually no customer testified that Western Reserve's basic rates were too high. Instead the testimony went almost exclusively to extended area service issues.

All parties offering testimony agreed that the test-year revenues exceeded a reasonable revenue requirement and recommended that revenues be reduced accordingly. The issue is the magnitude of the over-earnings. OCC witness Miller testified that the company's revenues should be reduced by \$20,679,355 (OCC Ex. 5, Revised Sched. PEM 1). In arriving at his conclusion, Mr. Miller used a total-company approach which considers both interstate and intrastate data. Also using the total-company approach, staff witness Hensel testified that Western Reserve's rates should be reduced by \$20,282,047 (Staff Ex. 3, at 3). Company witness Cornacchione, however, calculated his revenue requirement using the method adopted by the parties in the company's last rate case which relied on jurisdictionally separated intrastate data (WR Ex. 9, at 16-17). Using jurisdictionally separated data, Mr. Cornacchione calculated the required intrastate revenue reduction to be \$577,000 (WR Ex. 10, at 8).

The stipulation provides that, on a total-company basis, the company's revenues during the test year exceeded its revenue requirement by \$18,708,000 (Jt. Ex. 1, at 2). Under the stipulation, revenues will be reduced \$18,708,000 in the first year of the plan. Thereafter, in the second year of the plan, revenues will be reduced an additional \$2,000,000, and in the third year of the plan, revenues will be reduced an additional \$2,400,000 (*Id.*). Thus, the stipulated revenue reduction for the first year recognizes practically all of OCC's recommendations and falls within the range that was presented on the record. The revenue reductions of \$20,708,000 by year two and \$24,300,000 by year three exceed OCC's most favorable case. Thus, the calculation of revenue excess reflected in the stipulation is grounded in the record, is clearly reasonable, and shall be adopted by the Commission.

3. Interstate Issues:

Western Reserve's interstate access charges are currently governed by the National Exchange Carriers' Association (NECA) tariff which is approved by the FCC. Under NECA procedures, traffic-sensitive access charge revenues collected under the NECA tariff are pooled with those of other NECA participants for distribution to the local exchange companies on either an "average schedule" or "cost" settlement basis. Prior to January 1, 1994, Western Reserve was an average schedule company (WR Ex. 7, at 6). Historically, the use of interstate average schedule settlements eliminated the need to perform complex annual toll cost separation studies (*Id.*). However, because Western Reserve's costs are significantly below the average costs upon which the NECA traffic-sensitive access tariff rates are based, the average schedule settlements process produced interstate access revenues for Western Reserve which substantially exceeded its cost of providing interstate access service (OCC Ex. 2, at 7).

Company witness Mitchell testified that the company has come under increasing pressure from its interexchange carrier customers to reduce access charge levels as competition has grown in the interstate toll market. The interexchange carriers have pushed for access charge reductions that allow them to reduce end-user toll rates, stimulate usage, and provide for more efficient use of the network. Mr. Mitchell further indicated that the conversion to cost-based interstate settlements with NECA is a necessary step to avoid by-pass which would result in loss of the company's large customers and the resulting need to increase rates for basic services (WR Ex. 7, at 9-10). Therefore, on November 1, 1993, the company notified NECA that Western Reserve would convert from an average schedule settlements company to a cost-based settlements company on January 1, 1994 (*Id.* at 7). The conversion would mean that Western Reserve would receive settlements based on its costs rather than the average costs of the companies in the pool. That conversion has now occurred, which will result in Western Reserve realizing significantly less revenue through the NECA settlement process. The stipulation quantifies this amount of reduced revenue as \$10,258,000 (Jt. Ex. 1, at 2).

One of the principal issues in this case is whether the annual revenue reduction resulting from the conversion to cost-based settlements should be recognized in determining the intrastate revenue reduction required in these proceedings. The stipulating parties acknowledge that, while test-year revenues produced a total-company excess of \$18,708,000, the company's conversion to cost-based interstate settlements in 1994 reduced these test-year revenues by \$10,258,000. Accordingly, the stipulation allocated \$10,258,000 of the test-year overearnings to the company's conversion to cost-based settlements (Jt. Ex. 1, at 2).

In its staff report, the staff recognized that some of the company's overearnings should be attributed to its status as an average schedule participant in the NECA pool. Staff compared the company's NECA traffic-sensitive rates to cost-based rates of other Ohio telephone companies and determined that Western Reserve's rates exceeded those of other local exchange companies by 205 to 324 percent (S.R. at 10-11). OCC witness Rafferty agreed that some of the company's overearnings was attributable to interstate access rates which exceed cost (Tr. II, 22-24). Company witness Cornacchione testified that the revenue reduction to the company resulting from the conversion to cost-based settlements was \$10,258,000 (WR Ex. 13, at 5-6). The staff contends that the evidence shows that interstate access rates were in excess of costs, and that this reduction was reasonable, and should be recognized by the Commission.

OCC opposes the recognition of the interstate revenue reduction. OCC would allocate the entire revenue reduction to intra-

state end users. OCC proposed elimination of Tel-Touch, as the signatory parties to the stipulation agreed. For residential consumers, OCC further recommended elimination of rate bands and the establishment of an \$8 per month flat-rate charge, and a toll credit in the amount of \$6.25. Business customers would receive a reduction of \$5.7 million (OCC Ex. 3, at 25-28).

OCC first argues that the interstate revenue allocation must be rejected because it is not within the test year and it is not known and measurable (OCC Brief at 20). Further, OCC contends that this conversion was fully subject to the company's selection and control. OCC witness Rafferty also testified that there had been no showing that the revenue reduction will be anywhere near \$10,000,000 a year (OCC Ex. 12, at 10).

At first blush, it appears that OCC's argument may warrant some consideration. However, a close analysis of the record reveals that OCC is wrong. The staff analyzed test-year revenues and expenses on a total-company basis, using the established test year of 1992 and date certain of December 31, 1992 (Staff Ex. 3, Ex. DAB-1, Sched C-1; Staff Ex. 4, Sched. C-1). This analysis results in a total-company rate of return of 19.97 percent. Therefore, the stipulating parties agreed that, on a total-company basis, the company's revenues during the test year exceeded amounts required to earn a reasonable return by \$18,708,000 (Jt. Ex. 1, at 2). The parties then allocated \$10,258,000 of the test-year overearnings to the interstate jurisdiction to recognize the interstate overearnings. However, neither the staff's adjusted operating revenues as shown in Staff Exhibit 3 nor those in Staff Exhibit 4 reflect as an adjustment to operating revenues the company's conversion to cost-based settlements. Staff witness Hensel testified that when the stipulated total-company rate reductions were applied to staff's adjusted test-year revenues and expenses, the total-company rate of return to be achieved on a proforma basis is 10.7 percent. The Commission has already determined 10.7 percent rate of return to be reasonable for this company. Thus, the record clearly indicates that no adjustment whatsoever was made to total-company, test-year operating revenues by staff or the stipulating parties.

Once the Commission has determined the total-company revenue reduction, the Commission must then design the rates so that the revenue is distributed appropriately. The staff's analysis was based upon total-company operations. Staff witness Montgomery testified that the total-company revenue reduction of \$18,708,000 should be assigned to both interstate and intrastate revenues (Staff Ex. 5, at 2). According to company witness Cornacchione, the amount which should be allocated to the interstate jurisdiction is \$10,258,000. This amount was calculated by Mr. Cornacchione by applying 1992 interstate and intrastate jurisdictional allocation factors taken from the company's jurisdictional separations study (OCC Ex. 8) to staff's financial analysis (WR Ex.